

DEPARTMENT OF STATE REVENUE

Information Bulletin #88B
Income Tax
September 2020
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Effective Date: Upon Publication

SUBJECT: Income Tax Liability and Withholding for Race Teams

REFERENCES: [IC 5-1-17.5-42](#); [IC 6-3-1-12](#); [IC 6-3-2-3.2](#); [IC 6-3-4-13.5](#); [IC 6-3.6-2-2](#); [IC 6-3.6-2-13](#)

DISCLAIMER: Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is not consistent with the law, regulations, or court decisions is not binding on either the department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUMMARY OF CHANGES

This bulletin has been updated to include information pertaining to the department's new registration and filing system, INTIME.

I. DEFINITIONS

"Prizes" shall mean any purse, prize, or other amounts earned for placement or participation in a race or portion thereof, provided the race occurs in Indiana. For purposes of this bulletin, if money or other consideration is paid based on the participation in, or obtaining an aggregate finish over (e.g., points during a NASCAR or IndyCar season), a series of races, the portion of the money or other consideration attributable to Indiana shall be equal to the number of races in which a driver or team participated in Indiana divided by the total number of races in which that driver or team participated in all jurisdictions.

"Bonus" shall mean:

- (1) a bonus earned as a result of participation in a racing event, such as a performance bonus or any other bonus; and
- (2) a bonus paid for signing a contract, unless all of the following conditions are met:
 - (i) The payment of the signing bonus is not conditional upon the signee participating in a racing event for the team or performing any subsequent services for the team.
 - (ii) The signing bonus is payable separately from the salary and any other compensation.
 - (iii) The signing bonus is nonrefundable.

"Total income" means the total compensation received during the taxable year for services rendered. The term includes salaries, wages, bonuses, and any other type of compensation paid during the taxable year to a race team member for services rendered in that year. The term does not include strike benefits, severance pay, termination pay, contract or option year buy-out payments, expansion or relocation payments, or any other payments not related to services rendered to the race team.

"Indiana duty days" means the number of total duty days spent by a race team member within Indiana rendering a service for the race team in any manner during the taxable year, except travel days spent in Indiana that do not involve either a race, practice, qualification, training, testing, team meeting, promotional caravan, or other similar race team event. For purposes of determining the location of duty days, all Indiana activities associated with an Indiana race shall be considered to occur at the location of the Indiana race. For other racing-related activities such as testing at an Indiana race track, all Indiana activities shall be considered to occur at the location of the Indiana race track at which such activities occur.

"Total duty days" means all days during the taxable year that a race team member renders a service for the race team. The term includes:

- (1) race days, practice days, qualification days, training days, testing days, days spent at team meetings, days spent with a promotional caravan, and days served with the team in which the team competes or is scheduled to compete;

- (2) days spent conducting training and rehabilitation activities, but only if the service is conducted at the facilities of the race team; and
- (3) travel days that do not involve either a race, practice, qualification, training, testing, team meeting, promotional caravan, or other similar team event.

Total duty days for an individual who joins a race team during the season begin on the day the individual joins the team, and, for an individual who leaves a team, end on the day the individual leaves the team. When an individual changes teams during a taxable year, a separate duty day calculation must be made for the period the individual was with each team. Total duty days do not include those days for which a team member is not compensated and is not rendering a service for the team in any manner, including days when the team member has been suspended without pay and prohibited from performing any services for the team.

"Race team" includes a professional motorsports racing team that has services rendered by a race team member in Indiana or participated in a racing event at a qualified motorsports facility (as defined in [IC 5-1-17.5-14](#)).

"Race team member" includes employees or independent contractors who render services on behalf of the race team. The term includes, but is not limited to drivers, pit crew members, mechanics, technicians, spotters, crew chiefs, and any other individual whose activities directly impact the race car during a race, practice, qualification, training, and testing.

II. WITHHOLDING REQUIREMENTS-PRIZE MONEY

A. Withholding at the Source

For the first entity paying prize money for an event occurring at the Indianapolis Motor Speedway (e.g., the race operator paying to a race team), tax shall be withheld at the Indiana individual income tax rate of 3.23% plus the Marion County local tax rate of 2.02%. This applies whether the actual entity paying the prize money is domiciled in the district or outside the district.

Each person or entity responsible for withholding shall establish a withholding account for purposes of reporting amounts withheld from prize money. If an entity responsible for withholding does not have an Indiana withholding account, it must open an account with the Indiana Department of Revenue. Registration can be done online through INBiz, available online at inbiz.in.gov, and payments can be made through the department's online e-services portal for filing returns and making payments, the Indiana Taxpayer Information Management Engine (INTIME), which can be accessed at intime.dor.in.gov.

If an entity already has established one or more withholding accounts, the entity shall establish a separate withholding account for reporting withholdings from prize money. The person or entity shall report the withholdings on Form WH-1 no more than thirty (30) days after the end of the month during which the withholding occurs. The person or entity shall issue a Form IN-MSID to the prize recipient and provide a copy of each Form IN-MSID to the department at the time the withholding occurs. A list of the entities on whose behalf money was withheld shall be provided as well no more than thirty (30) days after the end of the month during which the withholding occurs. That list shall consist of the following information:

- Name of the entity
- Address of the entity
- Federal tax identification number of the entity
- Amount of prize money paid
- Amount of Indiana state tax withheld
- Amount of Marion County local tax withheld

The requirements can be illustrated by an example:

Example #1: Indianapolis Motor Speedway ("Race Operator") pays Race Team \$1,000,000 as a prize for a race in Indiana in May. Race Operator shall withhold 5.25% of the \$1,000,000 paid to Race Team. Race Operator shall remit the tax withheld to the department with a Form WH-1 for the month in which the prize money is paid. Race Operator shall issue a Form IN-MSID to Race Team reporting the \$1,000,000 in prize money paid and the tax withheld. Race Operator shall separately include the relevant information related to Race Team in the list provided by Race Operator.

B. Reports to Ultimate Recipients

If a person or entity has tax on prize money withheld on its behalf as provided in Section II A, that person or entity shall divide the withheld amount and provide the ultimate recipient(s) of the prize money a Form IN-MSID-A ("MSID-A"). The ultimate recipient is then permitted to claim the amount reported as withholding on the MSID-A as the ultimate recipient's own withholding, similar to an employee reporting withholdings from an employer. The amount of tax withholding should go to the entity on whose behalf the tax will be applied as a credit, subject to the paragraph below. It is incumbent on the issuer of the Form MSID-A to determine on whose behalf the tax is to be withheld; improper allocation and reporting of withholding may result in delays in processing and other issues, including assessments and refund denials.

For the MSID-A, various special rules apply. Those rules are as follows:

- If the amount is withheld on behalf of a C corporation, the withholdings should reflect only state taxes. Any previously withheld county taxes can be included as part of the state tax. If a C corporation receives a MSID-A reporting county tax, the C corporation is still permitted to claim that as an "other payment."
- If the amount is intended as an offset of withholding or composite tax of a partnership, S corporation, or trust, the MSID-A should be provided to the partnership, S corporation or trust rather than the owner(s) or beneficiary(ies). The partnership, S corporation, or trust shall then issue Schedule IN K-1s including such amounts as tax withheld.
- If an entity wishes to claim part of the withholding on a Form IN-MSID for application against the entity's own tax liability, it will issue an MSID-A to itself, reporting as both the issuer and the recipient.

The entity issuing the MSID-A must issue the MSID-A to the ultimate recipients and provide a copy of the MSID-A to the department no later than January 30 following the year for which the MSID-A was issued.

Nothing in these withholding requirements is intended to relieve any entity from other tax withholding requirements imposed by other provisions of Indiana law. For additional information on claiming the credit and refund (or claiming credit for such withholdings against other tax liabilities), please refer to page 6 of this bulletin.

Example #2: From the \$1,000,000 paid in Example 1, Race Team allocates the prize money and wishes to allocate the \$52,500 of withholding by Race Operator as follows:

- 40% to Driver A, a nonresident
- 20% to Corporation B, a C corporation
- 20% to Partnership C. Partnership C has three equal partners, Driver A, Partner D, and Partner E. Partner D is a nonresident but Partner E is an Indiana resident.
- 20% to itself.

Race Team will issue four MSID-A forms as follows:

1. Driver A, reflecting \$21,000 of withholding.
2. Corporation B, reflecting \$10,500 of withholding
3. Partnership C, reflecting \$10,500 of withholding.
 - a. Race Team will not issue an MSID-A to Partner D or Partner E, nor will Race Team include this withholding as part of Driver A's withholding.
 - b. Partnership C may allocate this as part of their tax withholding on Partnership C's K-1s issued to its nonresident partners. Partnership C will claim this as an "other tax payment."
4. Race Team, reflecting \$10,500 of withholding.

III. WITHHOLDING REQUIREMENT—COMPENSATION, SALARY, AND/OR BONUSES

Any payment of compensation, salary and/or bonus by an employer or race team (hereinafter referred to as "employer") to a race team member shall have tax withheld on the Indiana portion of the income. This does not include amounts paid as prize money to a team member based on a team member's ownership interest in a race team addressed above. This withholding shall apply regardless of the status of the race team member as an independent contractor, employee, or other designation. For nonresident race team members, the Indiana portion of the income shall be equal to:

Total income for the year (as defined above) times Indiana duty days divided by total duty days.

In addition, [IC 6-3.6-2-13](#)(3) provides that, effective for services rendered on or after January 1, 2018, team

members who are neither Indiana residents nor nonresidents with a principal place of business or employment in Indiana (each determined as of January 1 of the taxable year) will be subject to local income tax. The income subject to local income tax for a particular county will be equal to:

Total income for the year (as defined above) times Indiana duty days worked in that county divided by total duty days.

The amount to be withheld should be computed based on the instructions provided in Departmental Notice #1, which is available online at the following address: in.gov/dor/files/reference/dn01.pdf. If the total income for the year cannot be readily determined at the time of the race, an entity paying income to a race team member shall determine the Indiana income subject to withholding by taking the total income paid to the race team member for the period(s) in which the race team member was performing services, multiplying that by the number of days worked in Indiana during the period(s), then dividing by the number of days worked everywhere during the period(s). The proration of income shall be based on the period in which the services are performed, rather than the period in which the compensation is paid. For nonresident team members who do not have a principal place of business or employment in Indiana as of January 1 of a particular year, the income subject to local tax withholding for each county shall be computed in a similar manner as the Indiana income subject to withholding.

The withholding instructions above for the amounts to be paid based on duty days are applicable only to nonresidents and only to the extent the team member derives Indiana income. For purposes of withholding on residents, whether employees or independent contractor race team members, Indiana law governing the amount of withholding for Indiana state and local income tax for residents shall otherwise apply.

Also, if a team member is otherwise subject to tax withholding for nonresident partners, S corporation shareholders, trust beneficiaries, any Indiana employment other than as a member of a race team, or any other provision under Indiana law (including prize money withholding discussed previously), those tax withholding rules shall apply to the extent the team member derives Indiana income from these sources. The local income tax rules under [IC 6-3.6-2-13\(3\)](#) (as effective January 1, 2018) for team members who are neither Indiana residents nor have a principal place of business or employment in Indiana on January 1, do not apply to distributive share income.

If the race team member is an employee of the race team and is a resident of a state with a reciprocal income tax agreement with Indiana or a resident of a reverse credit state (currently Arizona, Oregon, and the District of Columbia), the race team member's wages are not subject to state income tax withholding. However, the race team member's wages are still subject to local income tax withholding effective January 1, 2018. Other non-employee payments (e.g., payments to a contractor) to race team members that are residents of a state with a reciprocal agreement are not subject to the reciprocity agreements and are still subject to state and local tax withholding by the race team. Currently, the states with reciprocal income tax agreements with Indiana are Kentucky, Michigan, Ohio, Pennsylvania, and Wisconsin.

In each of the next three examples, assume the race team member resides outside Indiana in a state not subject to a reciprocal income tax agreement with Indiana. Further, assume that all Indiana duty days occur in one county.

Example #3: A race team member earns \$50,000 in 2018. The race team member has five duty days in Indiana in 2018 and 100 total duty days. The race team's withholding on behalf of the race team member shall be based on \$50,000 times five Indiana duty days divided by 100 total duty days, or \$2,500.

Example #4: A race team member earns \$5,000 for a two-week period beginning May 15 and ending May 28. The team member has five Indiana duty days and eight total duty days during the period. The race team cannot determine the exact number of duty days the team member will work during the year. The withholding shall be based on \$5,000 times five Indiana duty days divided by eight total duty days, or \$3,125. This withholding shall be reported during the month the payment is made to the team member, even if the payment month is different than the months in which the race member performs services.

Example #5: A race team member earns \$40,000 during the course of the year prior to December. The race team member has five duty days in Indiana in 2018 and 100 total duty days and had \$2,000 of Indiana income subject to withholding. In December, the race team member receives a \$10,000 bonus. The bonus is considered compensation subject to withholding. The \$10,000 bonus is subject to withholding based on \$10,000 times five Indiana duty days divided by 100 total duty days, or \$500 of Indiana income. Withholding on this amount is in addition to the previous withholding on the previous payments to the race team

members.

Any tax withheld on behalf of Indiana shall be reported and remitted to the department on a monthly basis unless the race team is allowed to report as an annual return filer. Any tax withholding should be reported to the department on Form WH-1. If the employer files a separate Form WH-1 for each Indiana location, these taxes should be reported for any location corresponding to the location of the race. If an employer files a single Form WH-1 for all Indiana locations, the taxes should be reported on that Form WH-1.

If any income is reported on a federal Form W-2, that federal Form W-2 is sufficient for reporting the Indiana portion of the total income. If any income is not reported on a federal Form W-2 (for instance, the team member is an independent contractor), the employer should provide the team member with a Form 1099-NEC. The Form 1099-NEC should report all Indiana income and the tax withheld on that income. These W-2 and 1099-NEC forms must be sent to the department annually with the Form WH-3 unless directed otherwise as in the instructions for those individuals included on the nonresident individual race team member composite return. Further, a Form WH-3 should only be filed if the race team issues withholding statements (e.g., Form W-2 or Form 1099-NEC) reflecting Indiana state and/or local tax withholding.

Example #6: A race team member earns \$50,000 in 2018. The race team member has five duty days in Indiana in 2018 and 100 total duty days. The race team member resides in Indiana. The race team's withholding on behalf of the race team member shall be based on \$50,000, regardless of any proration for duty days inside and outside Indiana and regardless of the race team member's status as an employee or an independent contractor.

Example #7: A nonresident race team member also owns an interest in an S corporation. The race team's withholding for any race team income paid to the race team shall be based upon the member's duty days computed according to the guidelines set forth in this bulletin. The race team income is subject to both state and local income tax withholding, regardless of whether the member had the member's principal place of business or employment in Indiana on January 1. Any nonresident shareholder withholding that is due for the race team member for its distributive share of the S corporation income shall be determined pursuant to Indiana statutes and any guidelines set forth by the department that apply generally to nonresident S corporation shareholders.

Each race team shall provide information to team members sufficient to determine each team member's Indiana income and the portion attributable to activities during motorsports events. This will be reported on Form IMS-1, available online at in.gov/dor/5513.htm. This information shall include the team member's name, social security number, total compensation, Indiana duty days, and total duty days. Substantiation of duty days must be provided upon the request of the department.

If a race team is not otherwise subject to Indiana employee tax withholding **and** would have less than \$1,000 in Indiana income subject to race team member withholding based on this bulletin, the race team is not required to withhold taxes for its team members in their capacity as team members. However, this shall not relieve the race team from other withholding, filing, and tax payment provisions arising under Indiana law.

IV. COMPOSITE RETURN FILING

For taxable years beginning after December 31, 2013, a race team not based in Indiana shall be allowed to file a composite return on behalf of nonresident individual team members if the same amount of tax is remitted as if the team member had filed an individual income tax return. Thus, the nonresident race team member only may be included on the composite return if the team member's only source of Indiana income is as a team member. Other individuals, such as resident individuals or individuals who have Indiana income from other sources, may not be included in such composite return.

The filing of a composite return exempts a race team member from having to file an individual income tax return if the income from the race team is the individual's only source of Indiana income. The race team member must properly execute and sign the Race Team Affidavit for each year the race team member has elected to be included in the composite return for the Race Team to include the member in its composite return.

If a race team or other entity for whom composite filing is required has taxes withheld on prize money awarded to the race team or other entity, the race team or other entity may use the prize money withholding as a credit against such composite withholding. However, such credit is only permitted to offset any tax due and is not permitted to be refunded from the composite return.

If any excess payment or credit exists (including for teams for which no composite filing is required), a race team or other entity must file an amended Form WH-3 in order to claim a refund of any excess payments or credits. The race team may designate that any excess be applied to other accounts (e.g., corporate income or nonresident partner/shareholder withholding); however, such request must be made on a GA-110L through INTIME.

Robert J. Grennes, Jr.
Commissioner

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